IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O.O.C.J.

APPEAL NO.715 OF 2004
IN
NOTICE OF MOTIION NO.1222 OF 2004
IN
SUIT NO.2939 OF 1999

Shri N.L.Mehta & anr. .. Appellants

v/s.

Foreshore Co-operative Housing
Society Limited & ors. .. Respondents

Mr.R.M.Kadam with Mr.Vineet Naik and Mr.S.R.Tilokchandani i/by M/s.M.K.Ambalal & Co. for appellants.

Mr.Birendra Saraf with Ms.S.M. Tally i/by Mr.S.Mohdbhai & Co. for respondent No.1.

Mr.Deo i/by M/s.Thakordas & Madgaonkar for respondent Nos.2 and 3.

Mr.P.Jaiswal i/by M/s. Kanga & Co. for respondent No.7.

Mr.J. Reis with Mr.Vinod Mahadik for respondent No.6.

CORAM : R.M.LODHA AND
J.P.DEVADHAR, JJ.

DATED : 22nd November, 2004

P.C.

The order dated May 6, 2004 passed by the learned motion Judge is impugned in the present appeal. By the said order, the learned motion Judge has granted ad-interim relief in terms of prayer (b) of the notice of motion except the bracketed portion.

2. Interalia, the grievance of the learned counsel

for the appellants is that the parties were heard at length by the learned motion Judge and the written submissions were also filed by the counsel for the parties but the learned motion Judge without consideration of the matter on merits, of course prima facie, granted ad-interim relief.

3. The impugned order is transcribed in 17 fool-scap pages. However, the learned motion Judge concluded in para 21 of the impugned order by observing that without going into any of the rival contentions raised by the parties on the merits of the matter, he was satisfied that the plaintiffs have made out a prima facie case in their favour, the balance of convenience and equity also lies in their favour. We are afraid, if the learned motion Judge was satisfied that the plaintiffs have made out a prima facie case in their favour and that the balance of convenience and equity was in their favour, he must have recorded reasons therefor. As a matter of fact, if the learned counsel for the parties argued the motion at length and we are told by the learned counsel for the parties that they had submitted written submissions, it would have been appropriate if the motion itself was heard and disposed of finally to avoid multiplicity of arguments and the proceedings. Be that as it may, since we are informed by the learned counsel for the respondent No.1 that the notice of motion is

already on the warned list, we are of the view that the motion deserves to be heard finally as early as possible. It is so because revalidation of the commencement certificate expires somewhere in the month of June, 2005.

4. We, accordingly, dispose of this appeal by following order:-

(i) The learned motion Judge is requested to hear and decide the notice of motion No.1222 of 2004 as early and expeditiously as possible and preferably within six weeks of the application being made by the plaintiffs for fixing the date of hearing of the notice of motion.

(ii) In case the notice of motion is not heard finally within the aforesaid time, liberty to the present appellants to apply to the learned motion Judge for vacation of the ad-interim order.

(R.M.LODHA, J.)

(J.P. DEVADHAR, J.)